IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 13..4..2007

Coram:

The Hon'ble Mr. Justice K.CHANDRU

W.P. Nos.46533 and 46534 of 2006

and

M.P.Nos. 1 of 2006 and 1 of 2007 in W.P.No.46533 of 2006
and
M.P.Nos. 1 of 2006 and 1 of 2007 in W.P.No.46534 of 2006

Tamil Nadu Petroproducts
Employees Union,
Rep. by its General Secretary
N.1, Sowbhakya Nagar,
Kosappur Village and Post,
Chennai 121. .. Petitioner in W.P.No.46533 of 2006

TPL-Heavy Chemicals Division
Employees Union,
Rep. by its General Secretary,
314, Mohanram Nagar,
Mogappair,
Chennai 600 037. .. Petitioner in W.P.No.46534 of 2006

vs.

1. The Secretary to Government,
Rural Development and Panchayat Raj
Department, Chennai 600 009.

2. The Commissioner of Labour,
DMS Compound, Teynampet,
Chennai 600 006.

3. The Chairman,
Tamil Nadu Petro Products Ltd.,
Manali, Chennai 600 068.

4. The State Election Officer,
Tamil Nadu Election Commission,
Chennai. .. Respondents in both WPs

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Petitions filed under Article 226 of the Constitution of India seeking for issuance of writ of Mandamus directing the third respondent to implement the GO.Ms.No.136, Rural Development and Panchayat Raj (C4) Department, dated 4.10.2006 of the 1st respondent and letter No.S4/2932/06 dated 11.10.2006 of the 2nd respondent declaring 13th and 15th October 2006 as Holidays, for the 3rd respondent's company and not to treat those days as leave on loss of pay for the employees of the third respondent.

For Petitioner : Mr.K.V. Ananthakrushnan
in both WPs

For Respondents 1,2 &4 : Mrs.C.K. Vishnupriya, GA
in both Wps

For Respondent-3 : Mr.Sanjay Mohan
for M/s. Ramasubramanian & Associates

C O M M O N O R D E R

The two Trade Unions working in the third respondent company have filed the present writ petitions with identical prayer which is as follows :-

> "... for issuance of writ of Mandamus directing the third respondent to implement the GO.Ms.No.136, Rural Development and Panchayat Raj (C4) Department, dated 4.10.2006 of the 1st respondent and letter No.S4/2932/06 dated 11.10.2006 of the 2nd respondent declaring 13th and 15th October 2006 as Holidays, for the 3rd respondent's company and not to treat those days as leave on loss of pay for the employees of the third respondent."

2. The local body elections held under the orders of the fourth respondent in two phases, viz., one on 13.10.2006 and the second phase was on 15.10.2006. Since 15.10.2006 happened to be a Sunday, the first respondent Government issued Notification in G.O.Ms.No.136 Rural Development and Panchayat Raj (C4) Department, dated 4.10.2006 notifying 13.10.2006 as a public holiday under Section 25 of the Negotiable Instruments Act, 1881 (Central Act XXVI of 1881) [For short, N.I. Act]. By virtue of the said notification, al the Government offices including industrial establishments of the Government and Government controlled bodies and all the educational institutions in Tamil Nadu were remained closed on 13.10.2006. A Notification to this effect was issued in the Government Gazette by virtue of the power conferred under Section 25 of the N.I. Act.

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Followed by this Notification, the second respondent Labour Commissioner issued a letter dated 9.10.2006 stating that the employers of all the industrial establishments, commercial establishments, Catering Establishments, Factories, Shops, Plantations, Motor Transport Undertakings, Beedi & Cigar Industries were to grant holiday on the day of polling to all their employees engaged by them so that they could exercise their franchise. A further letter dated 11.10.2006 was also issued by the second respondent stating that the Government has issued a letter dated 9.10.2006 stating that every person employed in any business, trade, industrial undertaking or any other establishment and entitled to vote at election shall, on the date of poll be granted a holiday and no deduction or abatement of the wages of any such person shall be made on account of a holiday being granted. It is stated that if any employer contravenes these stipulations, then he shall be punishable with fine under Section 135(B) of the Representation of the Peoples Act, 1951 [For short, R.P. Act].

3. At the outset, it must be stated here that the circular dated 11.10.2006 issued by the second respondent communicating the Government Order dated 9.10.2006 has got no relevance to the local body elections and it can be seen from the letter itself that a reference is made to Section 135(B) of the R.P.Act and, therefore, it can only have a reference to the general election or other election to the State Legislature and the Parliament. Further, the local body election is conducted by the State Election commission, the fourth respondent herein, which has been constituted in terms of Article 243K of the Constitution of India for the Panchayat and Article 243ZA of the Constitution of India for the Municipalities. The Tamil Nadu Panchayats Act, District Municipalities Act as well as the Madras City Municipal Corporation Act prescribe the procedure for conduct of elections and it is no where stated that the employees working in establishments are entitled for full wages on the day of polling. In view of this factor only, the Government had resorted to exercise its power under Section 25 of the N.I. Act thereby making a compulsory holiday for all Government offices, other industrial establishments and Government controlled Bodies, including educational institutions.

4. Even the letter dated 09.10.2006 issued by the second respondent Commissioner of Labour to all the employers of the various industrial establishments in Tamil Nadu was only recommendatory in nature and it is not an order pursuant to any law made by either the Parliament or Legislature. In fact, section 135(B) of the R.P. Act reads as follows:

> "Section 135(B): Grant of paid holiday to employees on the day of poll ---
>
> (1) Every person employed in any business trade, industrial undertaking or any other establishment and entitled to vote at an election to the House of the

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People or the Legislative Assembly of a State shall, on the day of poll, be granted a holiday.

(2) No deduction or abatement of the wages of any such person shall be made on account of a holiday having been granted in accordance with sub-section (1) and if such person is employed on the basis that he would not ordinarily receive wages for such a day he shall nonetheless be paid for such day the wages he would have drawn had not a holiday been granted to him on that day.

(3) If an employer contravenes the provisions of sub-section (1) or sub-section (2), then such employer shall be punishable with fine which may extend to five hundred rupees.

(4) This section shall not apply to any elector whose absence may cause danger or substantial loss in respect of the employment in which he is engaged."

In view of the same, the provisions of R.P. Act will not apply to the facts of the present case.

5. On the date of election, the third respondent had permitted its employees to go and exercise their franchise by granting necessary permission for a period of 3-1/2 hours on 13.10.2006 and 15.10.2006. However, it is seen from the averments in the affidavit that some employees availed full day holiday on either of the days and the petitioner Union wrote that the whole day must be treated as a holiday and it cannot be treated as leave on loss of pay. The petitioner Union also brought to the notice of the third respondent Management the various circulars of the Government and the Notification for which the third respondent also suitably replied. Therefore, the petitioner filed these two writ petitions and sought for an order of injunction, which was also granted on 30.11.2006 against deduction of any amount from the salary payable to the employees of the third respondent company. It is this order which is sought to be vacated by the third respondent.

6. When the matter came up for vacating the injunction, with the consent of the parties, the main writ petition itself is taken up for hearing.

7. I have heard the arguments of Mr.K.V.Ananthakrishnan, learned counsel appearing for the petitioners, Mrs.C.K.Vishnupriya, learned Government Advocate representing the respondents 1, 2 and 4 and Mr.Sanjay Mohan, learned counsel appearing for M/s Ramasubramanian Associates for the third respondent and have perused the records.

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8. At the outset, Mr.Sanjay Mohan, learned counsel appearing for the third respondent raised a preliminary objection with reference to the maintainability of the writ petition on the ground that the third respondent is private company and there was no public duty involved for granting any holiday and that if any amount is recovered, it is well open to the petitioner Union to agitate the same before the appropriate forum.

9. Per contra, Mr.K.V. Ananthakrishnan, learned counsel appearing for the petitioner Union submitted that the right to vote in a local body election is constitutional and statutory and by the action of the third respondent, certain workers were prevented from exercising their right to franchise and that the third respondent has disobeyed the circulars of the respondents 1 and 2. Therefore, the writ will lie.

10. Before going into the maintainability of the writ petition, it must first be ascertained whether there is a right on the part of any employee to avail leave on the date of election in the absence of any statutory guarantee. As already referred to, the leave and holidays for employees working in a private industry is governed by the provisions of the Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958 and so far as the weekly off and the Earned leave are concerned, the same is governed by the Factories Act and the Sick Leave is governed by the Employees' State Insurance Act. Admittedly, the provisions of the N.I. Act have no application to a private industry such as the third respondent. Even the Government Circular, which was further communicated by the second respondent Commissioner has only reference to the R.P. Act and, therefore, that has no relevance to local body elections. The constitutional provisions creating the State Election Commission and the relevant legislature and local bodies also do not contain any provision with reference to the right to have a holiday on the day of local body polls and the only question remains is that in the absence of law, whether the workmen are entitled to avail the leave on their own accord and thereafter, question the action of the Management treating the said leave taken by some workmen as leave on loss of pay, then approaching this Court under Article 226 of the Constitution of India against any such deduction, is not permissible.

11. First of all, the maintainability of the writ petition against the third respondent in the absence of any statutory obligation is doubtful and on this ground, the writ petition has to fail. In any event, the learned counsel for the petitioner was unable to refer to any provision of law to substantiate his contention that the workman is entitled for leave on the day of local body election as a matter of right. Further, in the facts and circumstances of the case, the petitioner Union had not disclosed as to how many workers were denied their right to

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franchise on the day of polling especially when admittedly, the third respondent has granted 3-1/2 hours paid off to go for voting in the election.

12. In the light of the above, there is no case made out by the petitioners and the petitions are misconceived and are dismissed accordingly. The stay granted by this Court vide order dated 30.11.2006 will stand vacated. However, the parties are allowed to bear their own costs. Consequently, connected Miscellaneous Petitions will stand closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Secretary to Government,
Rural Development and Panchayat Raj
Department, Chennai 600 009.

2. The Commissioner of Labour,
DMS Compound, Teynampet,
Chennai 600 006.

3. The State Election Officer,
Tamil Nadu Election Commission,
Chennai.

2 ccs to the M/s. K.V.anantha Krushnan, Advocate, Sr. 24269, 24270

W.P. Nos.46533 & 46534 of 2006

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